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Medina, OH 44256

Office of the Director
Group 3600

In re application of :
David T. Frederick, et al. :
Application No. 09/086,857 :
Filed : May 29, 1998 :
For: SYSTEM FOR TRACKING AND :
DISPENSING MEDICAL ITEMS :
FROM ENVIRONMENTALLY :
CONTROLLED STORAGE AREA :

DECISION ON PETITION FOR
HOLDING OF DEFECTIVE
APPEAL BRIEF

This is in response to applicants' petition received May 7, 2001 requesting withdrawal of the holding of defective appeal brief. This petition will be treated as a petition to invoke the supervisory authority of the Director of the United States Patent and Trademark Office (USPTO) under 37 CFR 1.181.

On January 17, 2001, petitioner timely submitted an appeal brief. The examiner mailed a notice of defective appeal brief on April 9, 2001. The sole reason given for holding the brief as defective was the length thereof. Petitioner filed a supplemental appeal brief and the instant petition on May 7, 2001 requesting that the notice of defective brief be withdrawn as being based on an erroneous assertion that is contrary to USPTO policy regarding the standards that must be met when filing appeal briefs before the Board of Patent Appeals and Interferences (BPAI). On July 18, 2001 the examiner mailed a second notice of defective appeal brief objecting to the length of the supplemental appeal brief submitted on May 7. The petition submitted will be considered as requesting relief from the requirement made by the examiner in both the April 9 and the May 7 notices since the issue raised by the examiner in each notice is identical.

An appeal to the BPAI is not an appeal to an Article III federal court of appeal. An appeal to the BPAI is an administrative proceeding provided in title 35 of the United States Code and title 37 Code of Federal Regulations. Although there are page limits provided in federal rules for appellate procedures within federal courts (Article III Courts), they do not apply to appeal briefs submitted to the BPAI.

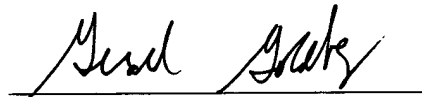
37 CFR 1.943(c) provides for a page/word limit on briefs in *inter partes* reexamination proceedings. 37 CFR 2.128(b) also provides for express page limits of main briefs and reply briefs submitted to the Trademark Trial and Appeal Board. No such express

language is provided elsewhere in title 35 of the United States Code and title 37 Code of Federal Regulations for a page/word limit on briefs in *ex parte* application or reexamination proceedings to the Board of Patent Appeals and Interferences. By negative implication, there is no such limit during *ex parte* application or reexamination proceedings.

Therefore, the notices of defective appeal brief of April 9, 2001 and July 18, 2001 are hereby vacated and the appeal brief submitted on January 12, 2001 as well as the supplemental appeal brief submitted on May 7, 2001 are deemed to be appropriate under 37 CFR 1.192.

However, the petition is **DISMISSED AS MOOT**. The reason for this dismissal is that prosecution will be reopened based upon the decision rendered for the petition for withdrawal of the restriction requirement submitted on October 20, 2000.

The application will be forwarded to the assigned examiner for prompt reopening of prosecution.



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Dr
rar, 8/29/02